

RULES

AND

ORDERS

FOR THE COURT

Of the KINGS

BENCH

At *WESTMINSTER*,

Made and published by the

JUDGES of the said Court, in
the Terme of *St. Michael*,

In the year 1654.

LONDON,

Printed for *Abel Roper*, at the Sunne against *St.*
Dunstons Church in *Fleetstreet*. 1655.

1844

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RULES & ORDERS

FOR THE KINGS BENCH,

In the Terme of St. Michael, In the year of our
LORD. 1654.

1. **F**or the reducing of Attornies, and Officers, to their due attendance.
2. For the reformation of abuses of Sheriffs, and Bailiffs.
3. For discovery, and punishment of abuses in general.
4. For the constant preservation of ORDER in the Court.
5. For setting a constant course of practice, pleadings, and proceedings, especially where there hath been variety of opinion, or practice.

A3 **Concer**

Concerning Officers and Attornies.



That all Officers and Attornies of this Court be admitted of some Innes of Court, or Chancery, by the beginning of *Hillary* Terme next, or in the same Terme wherein they are admitted Officers or Attornies; and be in Commons one week in every Terme, and take Chambers there, or in case that cannot be conveniently, yet to take chambers or dwellings in some convenient places, and leave notice with the Butler, where their chamber or habitations are; under pain of being put out of the Roll of Attornies.

2. That all Officers and Attornies of this Court appear in person in this Court, upon, or before the fourteenth day of *Michaelmas* Terme, and upon, or before the seventh day of every other Terme, upon pain of ten shillings for the first default, twenty shillings for the second default, and putting out of the Roll

Roll upon the third default, the appearance to be entered with the Prothonotarie. And the defaulters to be delivered to the Court upon oath, if required within three days after the time appointed for appearance.

3. That every Sheriff have his Deputy in this Court; to returne and receive Writs. And that each Deputy yearly before *Hillary Terme*, have his name and the place of his residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Prothonotary.

4. That the Clerks of Assize, their Deputies or Assistants, do personally appear with their *Postes* on the first day of *Easter* and *Michaelmas Terme*; And the Deputy Sheriffs, and all other Officers of the Court do personally appear by the *Essoyn* day of every second Return of every Terme; and continue there during the residue of the Term, without some just cause to the contrary allowed by the Court,

5 That

5. That for the future, Common Solicitors be not admitted to practice in this Court, unlesse they be admitted Attornies of either Bench; providing that it extend not to the managing of Evidence at a Trial, nor to private Solicitors, or servants of Corporations, or other persons in the Causes of their Masters.

6. That none be admitted an Attorney of this Court for the time to come, unlesse he hath practized as a Common Solicitor in this Court by the space of five yeers now last past, or hath served, or shall have served by the space of five yeers as a Clerk to some Judge, Serjeant at Law, practising Councellour, Attorney, Clerk, or Officer of one of the Courts at *Westm.* unlesse his Master die, or give over his practice; And be also upon examination, found of good ability, and honesty, for such imployment; And that sufficient proof (to be put into writing) be made of such service to the Prothonotary upon a desire of admittance, and then filed without Fee.

7. That

for the Kings Bench.

5

7. That no person practice in another's name, nor that any Attornie knowingly permit another to practice in his name, upon pain of being put out of the Roll.

8. That Attornies dismissed by one Court from their practice for misdemeanours, be not after Certificate admitted to practice in another Court, it being contrary to the intent of the Law.

9. That no Under-Sheriff, or Bailiff of Sheriffs, or Liberties be admitted during such their employment, to practice as Attornies under pain of expulsion from the employment of an Attorney, and not to be readmitted.

10. That such Attornies as have not been attending their employment in this Court, by the space of one year last past, unlesse hindered by sicknesse, be not allowed their priviledge of Attornies.

11. That for the prevention of maintenance and Brocage, no Attornie bee Lessee in an Ejectment, nor Bail for a Defendant in this Court in any Action.

B

Concern-

Concerning Sheriffs and Bayliffs.

THat for the prevention and remedy of delays and abuses in Sheriffs, Under-Sheriffs, Bayliffs of Liberties; and their Deputies, and other Bailiffs of Sheriffs, &c. in execution of Process and Writs; If it shall appear that any such Officer shall wilfully delay the Execution, or Return of any Process or Execution, or shall take, or require any undue Fees for the same, or shall give notice to the Defendant, thereby to frustrate the Execution of any Process, or Writ; or having levied money, shall detain it in their hands, after the times of the Returns of their Writs, besides the ordinary Course of Amerciaments: The contempt or misdemeanour appearing, an Attachment, Information, Commitment, or Fine to be as the Case requireth, and this as well in case of a late Sheriff, or person before mentioned, as of them at present in Office.

That to reform the abuses by blank-
Warrants

for the Kings Bench.

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Warrants granted by Sheriffs, whereby persons are arrested and driven to extorted compositions for their liberty, without Process of Law, no Warrants be granted out to any Officer to Arrest or Attatch any person before a Writ first come to the Sheriff.

And whereas Sheriffs have taken immoderate and excessive Fees for execution of Writs of possession, and restitution of possession contrary to law; It is declared, that such immoderate Fees ought not to be taken, and in case such shall be taken, This Court to proceed to punish the same according to Law.

Concerning the reformation, and punishment of abuses in general.

Ordered that a Jury of able and credible Officers; Clerks, and Attornies, once in three years, be impannelled, and sworn to enquire.

1. Of the points usually inquirable by Writ (*viz.*) Falsities, Contempts, Misprisions, and Offences.

B 2

2 Of

Rules and Orders

2. Of such who have been admitted Attornies or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished, or removed as the case shall require.

3. Of new or exacted Fees, and of those that have taken them under whatsoever pretence; And to prepare and present a Table of the due and just Fees, that the same may be fixed and continue in every Office, and likewise for the Marshalsey.

And that some persons be enjoyned and sworn to give Evidence (*viz.*) some Clerks of the Court, and some Attornies in every County, not excluding others.

Concerning the better preservation of Order among the Officers and Clerks, and observation of breach of Orders and misdemeanors.

THat the Court do once every year, in *Michaelmas* Terme, nominate 12 or more able and credible practisers in the

for the Kings Bench.

9

the Court, to continue for the year coming, for the purposes hereafter limited.

1. That they or any of them examine such persons as shall desire to be admitted Attornies, and appoint convenient times, and places for the same. And in order thereunto, That such persons as shall desire to be admitted Attornies; first, attend the Prothonotary with his proof of service, then to repair to the persons appointed to examine Attornies; and being approved, to be presented to the Court with the assignation of his Approbation, and then to be sworn in open Court, unlesse some just exception be against him.

2. That they give information to the Court from time to time of Breaches of Orders, and miscarriages of Officers, Attornies and Clerks.

That a settled course of practice and proceedings be settled, especially in those Causes where there hath been uncertainty, and that the inconveniencies in Process, Proceedings, and Pleadings, may be

B 3

regula-

Rules and Orders

regulated unto a due course, in order whereunto these severall things are ordered and directed, according to the method of proceedings.

Concerning original Suits, and Process, and where laid.

THat Actions upon the Case, trespass for goods, assault, or imprisonment, arising in any English County, be laid in their proper Counties, unlesse they arise where the Justices of *Ni. Pri.* seldom come; and because Trespasse and Trover for goods, battery, imprisonment and slander, must needs be notorious in what County they arise. The Attorney knowingly laying them out of their proper County, unlesse in the Cases before expressed, or for such other causes as shall be allowed by the Judges of the Court, and duely made appear to be true, to be severely punished.

That although the Declaration bee delivered seven days before the last day of the next precedent Terme, or after, yet

yet before Plea upon Oath made the *Visue* may be changed upon motion in the said Transitory Actions the next Terme after, and the Defendant to plead to the new Action, as hee should have done in the other without delay.

That the *Visue* may be changed upon Oath, as before, though the Defendant come in by exigent.

Concerning Proceſſe and ſerving thereof.

That according to the proviſion of the Statute 31. *Eliz.* all Attornies that Sue out Proceſſes of Exigent, be careful that Writs of Proclamation be delivered, and the Sheriffs do take care duly to execute the ſame.

That according to the Statute of 23 *Hen. 6.* A priſoner taken upon a *Capias* in Proceſſe, be not diſcharged till he hath given Bond to appear, unleſſe the Plaintiff, or his Attorney ſhall conſent to take an appearance without Bail, and in ſuch caſe the Warrant of Attornie to appear to be ſubſcribed or accepted by the Defendants

fendants Attornie, and such Warrant not to be revoked, and an Attachment to be granted against the Bailiff offending herein, or against the Attornie refusing to appear, or procure an appearance, having so subscribed or accepted.

Concerning H. Corp. to Sheriffs, and Goalers.

That a *Habeas Corp. cum causa ad faciend. & recipiend.* directed to any Sheriff other than *London* or *Middlesex*, not to be returnable immediate, or in the Vacation-time, but at a day certain in Court, in the Terme, unlesse it be to deliver over to prison in discharge of his Bail.

That such *Habeas Corp.* to the Sheriffs of *London* or *Middlesex*, may be granted in Terme or Vacation-time returnable immediate.

That in case of a *Habeas Corp.* returnable immediate, the Sheriff ought to make his return the same day that the Writ is delivered, and to bring the body immediately as is required by the Writ, without

without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corp.* is directed to a Sheriff, Warden of the Fleet, or Goaler; the prisoner is to be brought in custody according to the Writ at the day limited, without being permitted to wander abroad in the mean time under pretence of such Writ.

That a *Habeas Corp. ad respondend.* may be granted to the Warden of the Fleet, or the Keeper of an Inferiour Prison of a Liberty, or Franchise returnable at a day certain in Court; and to be a good cause of Deteyner, as well as where a *Capias ad respondend.* comes to a Sheriff.

That a *Habeas Corp. ad satisfaciend.* may be granted to the Warden of the Fleet, or to such inferiour Goaler returnable in Court at a day certain, and the number-Roll of the Judgment to be indorsed upon the Writ by the Attorney, who sues it out, and such Writs to be a cause of Deteyner.

C

That

That if upon a *Habeas Corp. cum causa*, the Prisoner be returned charged with Process out of the *Common-Bench*, or *Exchequer*, though returnable at a day to come, the Prisoner may be committed with those causes.

If upon a *Habeas Corp.* or *Capi Corp.* the party be returned in Custody, and Bailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the Plaintiff, or his Attornie, and if taken *De bene esse*, the Prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon examination.

Concerning Habeas Corp. to Inferiour Courts, and Procedendo.

That Writs of *Habeas Corp.* directed to the inferiour Courts of *London, Westminster, Southwark*, and other Courts within

within five miles of *London*, may be returnable immediate; and if the Defendant intendeth to be bailed, then upon, or within four dayes after allowance of the Writ, notice is to be given in writing, of the names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff, or his Attornie, or him that caused the plaint to be entred; or if none can be found, then notice of the premises to be left in writing with the chief Clerk of the interior Court, or his Deputy, by the party that tenders the Bail, or his Attornie, and Oath made thereof, otherwise the Bail not to be taken, and a *Procedendo* granted, if desired, before Bail accepted.

That if no Bail in such cases be put in within eight dayes after the *Habeas Corp.* allowed in those Courts when it is returnable immediate, a *Procedendo* may be granted by any Judge of the Court, if desired, before Bail taken.

That if a Bail be taken in the absence of the Plaintiff, or his Attornie, the same

is to be taken *De bene esse*; and if no Exceptions be taken within twenty days after notice given to the Plaintiff, or his Attorney, of the names of the Bail, and before whom taken, Then upon Oath made of such notice, the Bail to be delivered out to be filed.

That if Bail upon a *Habeas Corp.* be taken before a Judge at his Chamber, and not excepted against, if not filed within four dayes after the twenty dayes, a *Procedendo* may be granted, upon certificate that it is not filed.

That in Terme-time the Plaintiff in the Inferiour Court may speed the Defendant to put in, or to file his Bail by rules given, and if not filed according to Rules, upon certificate thereof, a *Procedendo* to be granted.

Concerning special Bayl.

That in all Causes of removal, be it by *Habeas Corp.* Priviledg, or

on *Cercidrai*, special Bail ought to be given.

That upon a Cause removed, by *Habeas Corp.* out of the Courts of *Canterbury, Southampton, Hull, Litchfield, or Poole*, which are Counties where the Judges of *Ni. Pri.* seldome come, if the Action be transitory, it be laid in the County of *Kent, Southampton, York, Stafford, or Dorset*, where the Town and County lieth.

That in *Covenant*, because the Damages uncertain till declaration, Bail at discretion.

That in *Battery, Conspiracy, false Imprisonment*, no special Bail of Course without special Motion and Order.

That in *Slander* no special Bail, except in *Slander of Title*, wherein to be left to discretion of the Judges.

That in *Priviledge* (other than for Fees or disbursements in Court, as an Attornie of this Court). Bail at dis-

cretion of the Court, in such case where-
in a Suit by a Common person, special
Bail not requisite.

*Concerning Appearances, and entring
thereof.*

THat an Attornie of either Bench
accepting a Warrant, or subscribing
a Proceffe, Declaration or Warrant
to appear, be compelled to cause an ap-
pearance, or liable to an Attachment,
or put out of the Roll, as the cause re-
quires; and the Party not to be received
to Countermand such appearance after his
Reteyner.

That no person without Rule of Court,
Order of Judge, or Prothonotary, and
notice to the adverse Party or his Attor-
nie, change or shift his Attornie; And
such Attornie newly coming in, to take
notice at his peril, of the Rules where-
unto the former Attornie was liable, had
he continued.

That

That a Reteyder of an Attornie of the Common Pleas, by an Attorney of the Kings-Bench, and *E converse*, be a sufficient excuse to the Attorney so reteyning, acting according to such Reteyder, and the Attorney so reteyning, without warrant from the Party, to be liable to punishment.

Rules to declare and Plead.

IF the Defendant be committed to the Prison of the *Marshalsey*, by the Proccesse of this Court, the Prisoner giving Rules to declare, and notice thereof to the Plaintiff or his Attorney, and Oath thereof made, The Plaintiff not Declaring before the end of the second Terme after Commitment inclusively, Then the Defendant in reference thereunto, to be discharged of the Imprisonment in the end of the second Term upon Common Bail.

And

And if any Defendant be committed to any other Prison, upon any Proceſſe of this Court, giving Rules and notice as before, and Oath thereof made, If the Plaintiff do not remove the prisoner, and Declare before the end of the ſecond Term after the Commitment in- cluſively, Then the Defendant in refe- rence thereunto likewise to be discharg- ed of the Imprisonment in the end of the ſecond Term, upon Common Bail.

Concerning Declarations.

FOr avoiding of long and unnecessa- ry repetitions of the Original Writ in Actions upon the Case, and Personal Actions upon Penal Statutes.

That Declarations in Actions of Tres- passe upon the Case, or Personal Acti- ons upon any general Statute, namely, *Hue and Cry*, *Monopolies*, or for a Suit in the Admiralty, and suchlike, other
then

then Debt, repeat not the Originall Writ, but only the nature of the Action, viz. *A. B.* was Attached to answer *C. D.* in Plea of Trespasse upon the Case, or in a Plea of Trespasse and contempt against the Form of the Statute.

For the avoiding of the Common Bar, and new assignment.

The Declaration upon an Original *Quare Clausum fregit* may mention the place certainly, and so to prevent the use and necessity of the Common Barre and new assignment.

That unnecessary Length of Declarations be reformed, and in Order thereunto,

THat in Actions of Covenant, not to repeat more of the Deed than is necessary for the Assignment of the Breach, and not to repeat the Covenant in the conclusion.

D

In

In Actions of Slander long Preambles forborne, and no more enducement than what is necessary for the maintenance of the Action; but when it requires a special enducement, or colloquium.

That in Actions upon generall Statutes, the Declaration not to repeat the Statute, but to conclude against the form of the Statute, in such case made and provided; as in case of Debt upon the Statute of 2 *Ed. 6.* for Tythes, and 32 *Hen. 8.* for maintenance, 21. *Jac.* of Monopolies.

That in Actions of Debt upon a judgement had in the Courts at *Westminster*, to recite onely the judgement; but if a judgement had by or against an Execuror or Administrator, then the Action of Debt upon that judgement, to repeat the declaration and judgement.

That the Plaintiff may amend his Declaration paying costs, or giving an Imparlance at the Plaintiffs election; by the
order

order of Court, or a Judge after it is entered, if the amendment be but a small matter, that it doth not deface the Roll.

*Concerning the entring of Rolls, and
by whom.*

That no Rolls be delivered to bee Entered but to the Prothonotaries Clerks.

That no Rolls be carried into the Countrey, under pain that the Offender be excluded from entring any more Rolls afterwards as a Clerk.

*Concerning Imparlances upon Suits
by Original.*

FOrasmuch as some inconveniences do sometimes happen to the Plaintiffs by entring their Declarations in

D 2 special

Rules and Orders

special Actions : It is therefore Ordered, that the Plaintiffs in such special actions, shall have liberty to enter Imparances the Terme following, entring the same of the first Terme with an Incipitur, as it hath been usual; and that all other Imparances be duly entred before any Issues, Demurrers or Judgements thereupon be entred.

That if a Defendant appear the first Terme, and give no Rules to Declare, the Defendants Attorney may the second Terme be compelled to accept a Declaration with an Imparance, and the Declaration may be entred as of that Term, with an Imparance over to the next Term, or in the first Term with an Incipitur as before, as the case shall require.

That if the Plaintiff declare not the second Terme, though the Defendant give no Rules; yet a Non-suit may be entred at the end of the second Terme, upon a continuance over by him, by *dies datus*, but not the third Terme or after.

Upon

Upon a meer reall Action an Impar-
lance to be of Course.

That in Ejectment, or any personall
Action, if the appearance be the first
return of *Hillary* or *Trinity* Term, no
Imparlance without consent or speciall
Rule.

In Causes other than *London* or *Mid-
dlesex*, if the appearance be before *Crafti-
num Martini*, or *Mensem Pasche*, no
Imparlance without consent or speciall
Rule, but if upon, or after those returns
an Imparlance of Course.

In *London* or *Middlesex*, if the appear-
ance be before *Craftinum Ascensionis*, or
before the last return of any other Term,
no Imparlance without consent or speci-
all Rule, but the Defendaht to plead as
of that Terme, within fourteen days af-
ter the end of the Terme, upon Rule gi-
ven to answer; but if of *Craftinum Af-
censionis*, or the last Return, then an Im-
parlance of Course.

If a Writ be Returnable *Quinque Pas-
che*, or the last Return of any Terme, the

Defendant giving Rules, and calling for a Declaration, if it be not delivered four dayes before the Effoine day of the ensuing Terme, or more, a Non-suit to be entred.

Concerning Pleading.

THe Common Bar and new Assignment to be forborn, where the certainty is contained in the Declaration, equivalent to a new Assignment.

That Pleading be succinct, without unnecessary repetitions.

That in the pleading of an outlawry, the mean Proceſſe be not repeated, but the Exigent and Outlawry joyned to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited, as the Statute of 21 Jacobi of Limitations.

Con-

Concerning Demurrers.

THat according to the Statute of 27 *Eliz.* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied expressions of double, negative pregnant, uncertaine, wanting form, and the like, but to shew specially wherein, that the other party may, as the cause shall require, either joyn in Demurrer, or amend paying Costs, or discontinue his Action.

That it be Declared that matters of Form, as well on the part of him that Demurres as of him thay joyns, in all parts of the Pleading are discharged, unlesse such as are specially assigned upon the Demurrer.

Con-

*Concerning Trials, and Notice of
Trials and Enquiries.*

IF the Plaintiff give notice of a Triall, and he proceed not, the Plaintiff not to take it down to Triall again without new notice to be given, unlesse by consent or Rule of Court.

That in case of such Warning, and no proceeding, the Defendant upon motion to have his Costs of his former Attendance to be taxed by the Prothonotary, unlesse he give the Defendant warning in convenient time that hee would not proceed, or shew cause to be allowed in the Court in excuse of such Costs.

Con-

Concerning Trials at Bar.

THat for the remedy of excessive Charges of the Trials at the Bar, especially whilest the Jury lieth out, it is Ordered that a Jury lying out one night after a privie Verdict delivered, there be allowed for the whole Diet of each Jury-man that night, no more then three shillings four pence a piece, and for two Tipstaves and one Crier or Usher, to each of them no more then two shillings Ordinary, besides the Charges of the Jurors Lodging.

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Con-

*Concerning Special Verdicts at the
Bar, and by Ni. Pri.*

IN finding of speciall Verdicts where the Points are single, and not complicated, and no special conclusion, the Council, if required, do subscribe the Points in question, and agree to amend the Omissions, or mistakes in the mean Conveyances, according to the truth, to bring the Points in question to Judgement.

That unnecessary finding of Deeds in *hac verba*, where the question rests not upon them, but are only derivation of Title, to be spared and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

Concerning new Trials.

THat where a Verdict finds entire Damages, where Damages are the principal, & part not actionable, though Judgment be arrested, yet by Rule of Court, a *Venire facias de novo* may issue, as upon an ill Verdict; And upon the new Triall, the Party may sever his Damages.

Concerning Judgements.

THat upon a Cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the Cause, if Judgement for the Plaintiff, the costs below to be considered and cast into the

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Judgment; if for the Defendant, the charges of putting in Bail.

That in a Judgment by *non sum informatus*, or *nihil dicit* in an *ejectione firme*, the Capiatur be entred upon the first Judgment.

And lastly, it is declared, That as the Court doth expect that all the Rules and Orders before mentioned, shall be duly observed; And are resolved severely to punish such as shall break or neglect any of them. So it is further declared, That all other former Orders and Rules yet in force, not hereby altered, suspended, or adnulled, shall be likewise observed & put in execution according to the true intent and meaning of the same.

By the Court.

Henry Rolle.

Richard Aske.

Richard Newdigate.

The

The Oath to be taken by every Attorney of the Kings-Bench before their admittance.

YOU shall do no falsehood or deceit, nor consent to any to be done within the Court of Kings-Bench. And if you shall know of any to bee done, you shall give notice thereof to the Lord Chief Justice, and other his brethren, Justices of that Court, that it may bee

E₃ refor-

reformed. You shall delay no man for lucre, or malice: You shall encrease no Fees, but you shall bee contented with the old Fees accustomed: You shall Plead no Forrein Pleas, nor sue any Forrein Suits unlawfully to hurt any man, but such as shall stand with the Order of the Law, and your Conscience: You shall Seal all such Proceſs as you shall sue out of this Court; with the Seal of the ſaid Court, and ſee the Officer ſatiſfied for the ſame: You ſhall not wittingly nor willingly ſue, or procure to be

be sued, any false Suits, nor
give aid nor consent to the
same, upon pain to be expul-
sed the said Court for ever.
And further, You shall use
and demean your self in the
Office of an Attorney with-
in this Court, according to
your Learning and discre-
tion.

So help you God.

FINIS.

be said, apply to the Court, nor
give any more consent to the
same, upon pain to be excom-
municated the said Court for ever.
And further, You shall be
and detain your self in the
Office of an Attorney within
in this Court, a copy to
your Learning and Obedience
in this

Wm. D. C.

FINIS

